

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 620

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

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TERRY L. SPIELER, Secretary.

S2759.03P

AN ACT

To amend chapters 8 and 327, RSMo, by adding thereto twelve new sections relating to the procurement of services for state construction projects, with a termination date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 8 and 327, RSMo, is amended by adding thereto twelve new sections, to be known as sections 8.875, 8.878, 8.881, 8.884, 8.887, 8.890, 8.893, 8.896, 8.899, 8.902, 8.905 and 327.395, to read as follows:

8.875. As used in sections 8.875 to 8.905, the following terms shall mean:

(1) "Division", the state office of administration, division of design and construction;

(2) "Director", the director of the division of design and construction;

(3) "Design-build", a project for which the design and construction services are furnished under one contract;

(4) "Design-builder", any individual, partnership, joint venture, corporation or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;

(5) "Design-build contract", a contract between the division and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project, and to furnish the labor, materials and other construction services for the same public project;

(6) "Design criteria package", performance-oriented specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(7) "Design criteria consultant", a person, corporation, partnership or other legal entity duly registered and authorized to practice architecture or professional engineering in this state under chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(8) "Proposal", an offer to enter into a design-build contract;

(9) "Request for proposals", the document by which the division solicits proposals for a design-build contract;

(10) "Stipend", an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal;

(11) "Evaluation team", a group of people selected by the director to evaluate the proposals of the design-builders. The team shall consist of at least two representatives of the division of design and construction and two representatives of the using agency. A fifth member shall be selected by the director and shall serve as chairman to facilitate the evaluation process and to vote only in case of a tie.

8.878. The director of design and construction shall make a determination of the need to use the design-build procurement process to complete a particular project. In making that determination, the director shall consider:

(1) The time available to complete the project and meet the needs of the end user and any need to expedite the delivery process;

(2) The type of project and its suitability to the design-build process;

(3) The size of the project;

(4) The level of agency knowledge and confidence about the project scope and definition;

(5) The availability of using agency staff to manage the project;

(6) The availability of the division of design and construction staff to manage the project.

The director shall not utilize the design-build procurement process as a delivery method for more than ten percent of the number of projects bid in any fiscal year.

8.881. The division may adopt regulations pursuant to chapter 536, RSMo, for the conduct of the design-build process. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after the effective date of this act. All rulemaking authority delegated

prior to the effective date of this act is of no force and effect and repealed as of the effective date of this act, however nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to the effective date of this act. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028 to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to the effective date of this act.

8.884. 1. The director shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.

2. A design criteria consultant may be employed or retained by the division to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections and to provide any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant shall be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo.

8.887. 1. Notice of requests for proposals shall be advertised in accordance with section 8.250. The division shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal and the selection criteria to be used.

2. The director shall establish in the request for proposal a time, place and other specific instructions for the receipt of proposals. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.

3. A request for proposals shall be prepared for each design-build contract containing at a minimum the following elements:

(1) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

(2) The proposed terms and conditions for the design-build contract;

(3) The design criteria package;

(4) A description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of

the drawings, specifications or other information that will be acceptable;

(5) A schedule for planned commencement and completion of the design-build contract;

(6) Budget limits for the design-build contract;

(7) Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

(8) Requirements including any available ratings for performance bonds, payment bonds and insurance; and

(9) Any other information that the division in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings of existing structures, environmental studies, photographs or references to public records.

4. The director shall solicit proposals in a three-phase process. Phase I shall be the solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project, and phase III shall be the proposal of the construction cost.

5. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with the instructions of the request for proposal.

8.890. 1. Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to:

(1) Demonstrated ability to perform projects comparable in design, scope and complexity;

(2) References of owners for whom design-build projects have been performed;

(3) Qualifications of personnel who will manage the design and construction aspects of the project;

(4) The names and qualifications of the primary design consultants and contractors with whom the design-builder proposes to subcontract. The design-builder may not replace an identified subcontractor or subconsultant without the written approval of the director.

2. The evaluation team shall evaluate the qualifications of all proposers and assign points to them in accordance with the instructions of the request for proposal. Designers on the project shall be evaluated in accordance with the requirements of section 8.285 to 8.291, RSMo. Phase I shall account for no less than thirty percent of the total point score.

3. The director shall have the sole discretion to disqualify any proposer, which in the director's opinion lacks the minimum qualifications required to perform the work, from proceeding to phase II. Under no circumstances shall price or fee be a part of the prequalification criteria.

8.893. Phase II of the process shall be conducted as follows:

(1) The director shall invite the top five proposers to participate in phase II of the process. If there are not five proposers, then all qualified proposers will be invited to submit phase II. If three qualified proposers cannot be identified, the contracting process will cease;

(2) Proposers must submit their design for the project, to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal;

(3) Under no circumstances should the design proposal contain any reference to the cost of the proposal;

(4) The design submittals will be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for no less than thirty percent of the total point score.

8.896. Phase III shall be conducted as follows:

(1) Once design proposals have been submitted, the proposers shall have a specified amount of time within which to assemble the phase III proposal. The phase III proposal must provide a firm, fixed cost of construction. The proposal must be accompanied by bid security and any other required submittals, such as statements of minority participation as required by the request for proposal;

(2) Cost proposals must be submitted in accordance with the instructions of the request for proposal. Failure to submit a cost proposal on time shall be cause to reject the proposal. Phase III shall account for not less than thirty percent of the total point score;

(3) At the time of the opening of the cost proposals, the evaluation team shall have completed its scoring of phases I and II;

(4) Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its combined scoring of phases I and II. Cost proposals will be evaluated in accordance with the requirements of the request for proposal and the points assigned will be added to the totals of phases I and II for each proposer;

(5) The responsive proposer with the highest total number of points will be awarded the contract. The director retains, however, the right to reject any and all proposals;

(6) If all proposals are rejected, the director may solicit new proposals using the same or different design criteria, budget constraints or qualifications.

8.899. As an inducement to qualified design professionals, the division shall pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each pre-qualified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer, the

state shall acquire a non-exclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

8.902. Any person or corporation that enters into a design-build contract with the division of design and construction for public construction does not violate the requirements of chapter 327, RSMo, so long as the architectural, engineering or land surveying services to be performed under the contract are performed by:

(1) Persons who are duly licensed in this state and who are employees of the design-build contractor which holds a certificate of authority from the board of registration; or

(2) Persons who are duly licensed in this state and who are under contract to the design-build contractor; or

(3) Corporations that hold current certificates of authority from the board for the appropriate profession which are under contract to the design-build contractor.

8.905. Sections 8.875, 8.878, 8.881, 8.884, 8.887, 8.890, 8.893, 8.896, 8.899 and 8.902 shall terminate on August 28, 2003, but such termination shall not affect contracts executed prior to that date.

327.395. 1. Any person or corporation that enters into a design/build contract for public or private construction shall be exempt from the requirement that such person be licensed or such corporation be authorized by the board as long as the architectural, engineering or land surveying services to be performed under the contract are performed by persons who are duly licensed in this state and who are not employees of the design/build contractor, or provided such services are performed by corporations that hold current certificates of authority from the board for the appropriate profession.

2. Any design/build contractor who performs the design work itself, or who practices architecture, professional engineering or professional land surveying through his, her or its own employees, or who contracts to do so, must hold a current license or certificate or authority from the board for the professions so practiced.

3. Nothing in this chapter shall prohibit the enforcement of a design/build contract by an unlicensed or unauthorized person or entity who merely furnishes, but does not itself, or through its employees, perform the architectural, engineering or surveying required by the contract and who does not hold itself out as able to perform such services.

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